

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 881 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No

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STATE OF GUJARAT

Versus

PRADIPKUMAR HAMJIBHAI YADAV

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Appearance:

MR SA PANDYA, APP for appellant

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/03/99

ORAL JUDGEMENT

This appeal has been preferred by the State against the order of acquittal recorded by the learned Judicial Magistrate First Class, Court No.2, Jamnagar in Criminal Case No.2703 of 1996 on 17-7-1998. The respondent-accused was charged and tried for the offences punishable under Secs.332 and 504 of Indian Penal Code.

2. The case of the prosecution in short is that the

original complainant Ramakant Krishnakant Dubey and the present respondent-original accused Pradipkumar Ramjibhai Yadav were serving in Railway Police Force at Jamnagar and at the relevant time, i.e. on 15-3-1996, duty of the accused was fixed at Windmill Chowki. On the day of incident, original accused entered into the office of complainant which was situated at Windmill Chowki and started abusive language against the present complainant. Thereafter, he left the premises and came back at about 1725 hours with a bamboo stick on his hand at the place where complainant was working and scuffle started between the parties and accused gave blow of bamboo stick to the complainant when Rajendrasinh and Harsuprasad Singh were in the office. Thereafter, complainant went to investigating officer and lodged a complaint against the respondent-accused which was registered under secs.332 and 504 of IPC. After investigating the same, investigating officer has submitted the charge-sheet. The respondent-accused pleaded not guilty to the charge and prayed for trial. To prove the charge against the accused, prosecution has led the oral evidence of various witnesses including the complainant and two other important eye witnesses and also relied upon the documentary evidence. After hearing the learned counsel for the respective parties, Court below has acquitted the present respondent. Therefore, the present appeal is preferred.

3. I have called for the record and proceedings and today, I have heard learned Addl. Public Prosecutor, Mr.S.A.Pandya for the State and also perused the record and proceedings. I have also perused the oral evidence of important witnesses, namely complainant Ramakant Krishnakant Dubey P.W. 1 at exh.14, Rajendrasinh Chotesinh P.W.4 at exh.25, Harsuprasad Singh P.W.5 at exh.26 and also gone through the FIR and other documentary evidences which have been shown to me by the learned APP.

4. It is true that the alleged eye witness, namely Rajendrasinh has not supported the say of the prosecution at all though the complainant has categorically stated on oath that at the time of occurrence, Rajendrasinh alongwith Harsuprasad was present, but Rajendrasinh has denied it on oath and, therefore, his evidence is not required to be taken into consideration. There are material contradictions in the oral evidence of complainant Ramakant Krishnakant Dubey, exh.14 and FIR, exh.15 and also the oral evidence of Harsuprasad, exh.26. As per the say of the complainant, though such an incident of giving blow with bamboo stick has taken

place, the complainant-victim has chosen not to take any medical treatment. Even he has not visited the hospital, but remained in the office till office hours were over. Over and above, looking to the distance and allotment of nature of work to complainant and respondent-accused, it creates doubt in the mind of the Court about the occurrence of alleged incident. Moreover, the alleged incident is not supported by the witnesses. After considering all the evidences which are on record, I am of the opinion that the judgment and order passed by the learned Judicial Magistrate First Class is just and proper and does not require any interference.

5. I am not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

6. Under the above circumstances, appeal is required to be dismissed and is accordingly dismissed.

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